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PATENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Friese, *et al.*

Serial No.: 10/620,475

Filed: July 16, 2003

For: STABLE CALIBRATORS OR
CONTROLS FOR MEASURING
HUMAN NATRIURETIC PEPTIDES

Case No.: 7098USO1

Group Art No.: 1655

Examiner: Ralph J. Gitomer

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the:

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450 on:

 1/19/06
Kim Anhel Date

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL LETTER

Dear Sir:


Enclosed herewith for the patent application identified above entitled STABLE CALIBRATORS OR CONTROLS FOR MEASURING HUMAN NATRIURETIC PEPTIDES are the following:

1. Response to Restriction Requirement (2 Pages); and
2. Return Receipt Postcard

The Commissioner is hereby authorized to charge any additional Filing Fees required under 37 CFR §1.16, as well as any patent application processing fees under 37 CFR §1.17 associated with this communication for which full payment had not been entered, to Deposit Account No. 01-0025.

Respectfully submitted,
Friese, *et al.*

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David J. Scholten
Registration No. 41,294
Attorney for Applicants

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 11/10/05
Kim Annel Date

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RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir,

In response to the Office Action dated December 22, 2005, please consider the following remarks.

RELATIONSHIP OF THE APPLICATIONS

The Office Action inquires as to the relationship between the subject application, Application No. 10/620,475, and 11/248,650.

Relationship to other applications

This application is the original in a family of applications now pending before the Office. Application No. 11/248,650 was filed out of an abundance of caution when applicants were advised that this application was withdrawn from issue, and the Office advised applicants not to pay the issue fee without clearly relieving applicants of the duty to pay the issue fee to avoid abandonment. Application No. 10/721,031 is a continuation-in-part principally differing from the present application in that it contains claims 52 et seq. directed to stabile or stabilizing test samples. Examiner Gitomer is respectfully directed to applicants response to the Office Action date 12/22/05 in the '031 application (also before Examiner Gitomer) for a fuller discussion of the relationship of these applications.

RESPONSE TO RESTRICTION REQUIREMENT

The Office Action requires election of one of two identified inventions. Specifically, the Office Action requires election of one of Group I (claims 1-17 and 19-36), and Group II

(claims 37-51). Group I is directed to a calibrator or control solution. Group II is directed to a method of making the same.


Applicants provisionally elect Group I with traverse. A requirement for restriction is properly made only when (1) there are two or more patentably distinct inventions, and (2) the inventions cannot be simultaneously examined without undue burden on the Examiner. Applicants respectfully submit that the Restriction Requirement is not proper because it would not constitute an undue burden to search and consider each of the inventions. While applicants agree that the inventions are patentably distinct, applicants cannot see even a trivial burden in the examination of both inventions at the same time. It is respectfully submitted that the Office would likely allege that any art teaching or reasonably suggesting the invention of one invention, would likely be considered by the Examiner in the Examination of the other invention even if the compositions and methods are assigned to partially distinct search classes. Accordingly, applicants respectfully request withdrawal of the Restriction Requirement.

Conclusion

The application is considered in good form for allowance. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject patent application, the Examiner is invited to contact the undersigned attorney at the telephone number indicated below.

Respectfully submitted,
Frieze, et al.

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